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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/735,405

Applicant(s)

PARKER, JANE SMITH

Examiner

PAUL DANNEMAN

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant, in response to the Examiner's Answer has filed a reply under 37 CFR 1.111 with amendment relevant to the new grounds of rejection. Applicant's request to reopen prosecution and withdraw the appeal pursuant to 37 CFR § 41.39(b)(1) is hereby granted.
2. Applicant has canceled pending Claims 1-22. The Examiner respectfully withdraws the rejection of canceled Claims 1-7 under 35 USC § 101.
3. Newly added Claims 23-44 are pending and have been examined in this application.

Response to Arguments

4. Applicant's arguments regarding the rejection of Claims 1, 3-15, 17 and 19-22 under 35 USC § 103(a) are moot as these claims have been canceled and the arguments are directed towards the amended claim language.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. **Claims 23-44** rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1-16 of U.S. Patent No. 7,369,654**. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to generating a set of switching and work statistics for a call center.

Claim Rejections - 35 USC § 103

7. **Claims 23-26, 28-34 and 36-44** are rejected under 35 U.S.C. 103(a) as being unpatentable over Judkins et al., US 6,707,904 B1 hereafter known as Judkins.

Claim 23:

With regard to the system limitations:

- ***A switching statistics database of an operator;***
- ***A work statistics database of an operator; and***
- ***A processor that generates an operator efficiency parameter by mathematically integrating the set of switching and work statistics.***

Judkins in at least Column 1, lines 66-67 and Column 2, lines 1-16 discloses a call center system for collecting and reporting information by the call center for use by a supervisor. A supervisor computer is connected to an automatic all distributor (ACD) server and a structured query language (SQL) server having an associated historical database for call center statistics for a plurality of agents. At predetermined time intervals, status data related to the agents and incoming calls are forwarded from the ACD server to the supervisor and processed by the

supervisor computer to produce real time reports for supervisor monitoring of the call center and agent statistics.

Judkins in at least Column 2, lines 17-26 further discloses that the real time reports comprise reports of calls answered, calls abandoned, talk times, agent status, calls in queue or agents in queue. The step of displaying the reports for viewing the performance of groups of agents can be categorized by teams of agents, agents, DNIS (Dialed Number Identification Service), or agent skill. The real time reports can be displayed using a graphical user interface.

Judkins in at least Column 2, lines 26-45 further discloses that the supervisor computer can also filter the retrieved historical data for presenting selected statistics of agent and call center operation and display the reports concerning agent productivity, agent productivity per hour (efficiency), agent time sheet, call statistics/history, calls per hour for 15 minutes, disposition code, or call by agent per hour.

Judkins in at least Column 2, lines 46-55 further discloses that the call center system includes a call center switch for receiving incoming calls from a communications network. A plurality of agents receive incoming calls that have been routed to respective agents. An automatic call distributor (ACD) server connected to the call center switch for routing calls to the agents and a supervisor computer connected to the ACD server for receiving real time status changes of agents and incoming calls.

Judkins in at least Column 7, lines 5-23 further discloses that an ACD server administrator, a database administrator or MIS personnel can open different windows to configure the parameters of the switching platform and match up the switch features specific to the switching platform to provide a seamless alignment between a switching matrix and system applications.

Judkins in at least Column 7, lines 51-63 further discloses that the primary database tables managed by the ACD Manager include (1) station management; (2) call center hours of operation; (3) agent skills; (4) all disposition; (5) DNIS configuration; (6) agent teams; and (7) agents. Judkins further discloses that the call center system Supervisor has software with an interface which management and operations staff with the real-time and historical information

required to manage the efficiency of their individual agents, teams, or their call center. The Supervisor provides a comprehensive set of performance metrics that can be analyzed, interpreted and incorporated into management decisions, and operated through the graphical user interface.

Claims 24 and 25:

With regard to the system limitations:

- ***Wherein the processor determines whether the generated operator efficiency parameter exceeds a predetermined efficiency parameter;***
- ***Wherein the predetermined efficiency parameter(s) are based on a set of operator information for the operator.***

Judkins does not specifically disclose a predetermined efficiency parameter per se, however Judkins in at least Column 7, lines 51-63 further discloses that the primary database tables managed by the ACD Manager include (1) station management; (2) call center hours of operation; (3) agent skills; (4) all disposition; (5) DNIS configuration; (6) agent teams; and (7) agents. Judkins further discloses that the call center system Supervisor has software with an interface which provides management and operations staff with the real-time and historical information required to manage the efficiency of their individual agents, teams, or their call center. The Supervisor provides a comprehensive set of performance metrics that can be analyzed, interpreted and incorporated into management decisions, and operated through the graphical user interface. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to modify Judkins to set a predetermined efficiency parameter (several performance thresholds, minimum and etc.) for an operator (agent) when conducting a performance / efficiency evaluation.

Claim 26:

With regard to the system limitations:

- ***Wherein the set of operator information includes at least one of a seniority grade, attendance data and operator-generated monthly revenue.***

Judkins in at least Column 12, lines 62-67 and Column 13, lines 1-18 discloses the use of skill-based routing of phone calls to agents who are best qualified to manage that call. The agent chosen for the call is based on the obtained level of proficiency for that skill based on training, experience, proficiency, and competency and language skills.

Claims 28 and 29:

With regard to the system limitations:

- ***Wherein the processor generates a quantity parameter from the switching statistics, generates a quality parameter of the operator from the work statistics and integrates the quantity parameter and the quality parameter; and***
- ***The Operator efficiency parameter is generated based on the integrated quantity and quality parameters.***

Judkins does not specifically disclose the separation of the switching and work statistics per se, however Judkins in at least Column 7, lines 51-63 further discloses that the primary database tables managed by the ACD Manager include (1) station management; (2) call center hours of operation; (3) agent skills; (4) all disposition; (5) DNIS configuration; (6) agent teams; and (7) agents.

Judkins in at least Column 2, lines 26-45 further discloses that the supervisor computer can also filter the retrieved historical data for presenting selected statistics of agent and call center operation and display the reports concerning agent productivity, agent productivity per hour (efficiency), agent time sheet, call statistics/history, calls per hour for 15 minutes, disposition code, or call by agent per hour.

Claims 30 and 38:

With regard to the system/method limitations:

- ***Wherein the set of switching statistics include telephone call statistics of a plain old telephone service switch.***

Judkins in at least Fig.1 discloses a PSTN and a switching platform. Judkins in at least Fig.4, Column 8, lines 22-67 and Column 9, lines 1-45 discloses that the switching platform defines what type of circuit boards are inserted into respective shelves and slots of the switch. These inserted cards operate with the T1 trunk board or an analog line unit.

Claims 31, 32-33, 39-41 and 44:

With regard to the limitations:

- ***Storing a set of switching statistics of an operator in a switching statistics database;***
- ***Storing a set of work statistics of an operator in a work statistics database;***

Judkins in at least Column 1, lines 66-67 and Column 2, lines 1-16 discloses a call center system for collecting and reporting information by the call center for use by a supervisor. A supervisor computer is connected to an automatic all distributor (ACD) server and a structured query language (SQL) server having an associated historical database for call center statistics for a plurality of agents. At predetermined time intervals, status data related to the agents and incoming calls are forwarded from the ACD server to the supervisor and processed by the supervisor computer to produce real time reports for supervisor monitoring of the call center and agent statistics.

Judkins in at least Column 2, lines 46-55 further discloses that the call center system includes a call center switch for receiving incoming calls from a communications network. A plurality of agents receive incoming calls that have been routed to respective agents. An automatic call distributor (ACD) server connected to the call center switch for routing calls to the agents and a

supervisor computer connected to the ACD server for receiving real time status changes of agents and incoming calls.

- ***Mathematically integrating the set of switching and work statistics with a processor;***

Judkins in at least Column 2, lines 17-26 further discloses that the real time reports comprise reports of calls answered, calls abandoned, talk times, agent status, calls in queue or agents in queue. The step of displaying the reports for viewing the performance of groups of agents can be categorized by teams of agents, agents, DNIS (Dialed Number Identification Service), or agent skill. The real time reports can be displayed using a graphical user interface.

Judkins in at least Column 2, lines 26-45 further discloses that the supervisor computer can also filter the retrieved historical data for presenting selected statistics of agent and call center operation and display the reports concerning agent productivity, agent productivity per hour (efficiency), agent time sheet, call statistics/history, calls per hour for 15 minutes, disposition code, or call by agent per hour.

- ***Generating an operator efficiency parameter of the operator with the processor based on the mathematical integration of the set of switching and work statistics.***
- ***Determining if generated operator efficiency exceeds a predetermined level for that operator.***

Judkins does not specifically disclose a predetermined efficiency parameter per se, however Judkins in at least Column 7, lines 51-63 further discloses that the primary database tables managed by the ACD Manager include (1) station management; (2) call center hours of operation; (3) agent skills; (4) all disposition; (5) DNIS configuration; (6) agent teams; and (7) agents. Judkins further discloses that the call center system Supervisor has software with an interface which provides management and operations staff with the real-time and historical information required to manage the efficiency of their individual agents, teams, or their call center. The Supervisor provides a comprehensive set of performance metrics that can be analyzed, interpreted and incorporated into management decisions, and operated through the graphical

user interface. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to modify Judkins to set a predetermined efficiency parameter (several performance thresholds, minimum and etc.) for an operator (agent) when conducting a performance / efficiency evaluation.

Claims 34 and 42:

With regard to the limitations:

- ***Wherein the set of operator information includes at least one of an employment seniority grade, an operator attendance data, and operator-generated monthly revenue.***

Judkins in at least Column 12, lines 62-67 and Column 13, lines 1-18 discloses the use of skill-based routing of phone calls to agents who are best qualified to manage that call. The agent chosen for the call is based on the obtained level of proficiency for that skill based on training, experience, proficiency, and competency and language skills.

Claims 36 and 37:

With regard to the system limitations:

- ***Wherein the processor generates a quantity parameter from the switching statistics, generates a quality parameter of the operator from the work statistics and integrates the quantity parameter and the quality parameter; and***
- ***The Operator efficiency parameter is generated based on the integrated quantity and quality parameters.***
- ***Wherein the quality parameter includes a time of handling a set of telephone calls from a plurality of customers.***

Judkins does not specifically disclose the separation of the switching and work statistics per se, however Judkins in at least Column 7, lines 51-63 further discloses that the primary database tables managed by the ACD Manager include (1) station management; (2) call center hours of

operation; (3) agent skills; (4) all disposition; (5) DNIS configuration; (6) agent teams; and (7) agents.

Judkins in at least Column 2, lines 26-45 further discloses that the supervisor computer can also filter the retrieved historical data for presenting selected statistics of agent and call center operation and display the reports concerning agent productivity, agent productivity per hour (efficiency), agent time sheet, call statistics/history, calls per hour for 15 minutes, disposition code, or call by agent per hour.

8. **Claims 27, 35 and 43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Judkins as applied to **claims 24, 32 and 39** above, and further in view of Stuart et al., US 2001/0032120 A1 hereafter known as Stuart.

Claims 27, 35 and 43:

With regard to the system and method limitations:

- ***Calculating with the processor a bonus payment in response to the generated operator efficiency parameter exceeding the predetermined efficiency parameter.***

Judkins does not specifically disclose the limitations as shown above per se, however Judkins in at least Column 2, lines 26-45 further discloses that the supervisor computer can also filter the retrieved historical data for presenting selected statistics of agent and call center operation and display the reports concerning agent productivity, agent productivity per hour (efficiency), agent time sheet, call statistics/history, calls per hour for 15 minutes, disposition code, or call by agent per hour.

Judkins in at least Column 7, lines 51-63 further discloses that the Supervisor provides a comprehensive set of performance metrics that can be analyzed, interpreted and incorporated into management decisions, and operated through the graphical user interface. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to modify Judkins to

set a predetermined efficiency parameter (several performance thresholds, minimum and etc.) for an operator (agent) when conducting a performance / efficiency evaluation.

Stuart in at least paragraph [0009] discloses a system for evaluating call agent efficiency and the agent cost data and determining a cost based performance indicator. Stuart in at least paragraph [0054] further discloses that the evaluation of a call agent's efficiency could enable management to introduce a valid "pay for performance" system. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill that a "pay for performance" system encompasses a bonus payment which a call center owner would be motivated to modify Judkins call center monitoring statistics with Stuart's call agent productivity and reward system with the motivation to minimize lost productivity (Stuart, paragraph [0006]).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/
Examiner, Art Unit 3627
25 April 2009

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627